

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME CEASAR ALVERTO,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
C/O FINCH, C/O PERCIFIELD, C/O
GRIJALVA, SGT. C. ROOP, HERBERT
C. PENROSE, MICHAEL ESTES,
KRISTI ENTROP, DR. JUGUILON,
STEPHEN SINCLAIR, RAYMOND
BUCHMANN, C/O ADAMIRE, RON
FRAKER, ROB JACKSON,
COUNSELOR WALKER, KURT
GRUBB, C/O DELEON, C/O PALMER,
JASON ROMERO, ADELE
WILLIAMS, BRYAN MCGARVIE,
DARREN HEAWARD, DENISE
LARSON, LT. TOM TABER, JASON
ULRICH, and STATE OF
WASHINGTON,

Defendants.

No. C11-5572 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on the Report and recommendation of U.S. Magistrate Judge Karen L. Strombom. Dkt. 114. The Magistrate Judge recommends that Defendants' motion for summary judgment be granted and Plaintiff's federal claims against Defendants Ethan Finch, Kim Grijalva, Robert Percifeld, Jason Ulrich, Bryan McGarvie, Herbert Penrose, Darren Heaward, Adelaide Williams, Ronald Fraker, Stephen Sinclair, Robert Jackson, Department of Corrections, and State of Washington be dismissed with prejudice and the claims

1 against Defendant Raymond Buchmann be dismissed without prejudice for failure to exhaust.¹
2 Dkt. 114. The Magistrate Judge further recommends that the Court decline to exercise
3 supplemental jurisdiction over Plaintiff's state law claims and that the state law claims be
4 dismissed without prejudice. Dkt. 114. The Plaintiff filed objections to the Report and
5 Recommendation. Dkt. 117.

6
7 The Court has reviewed the Objections and finds that they are no more than a restatement
8 of Plaintiff's arguments made in response to the motion for summary judgment. The Magistrate
9 Judge considered all relevant admissible evidence and Plaintiff fails to raise a genuine issue of
10 material fact supporting any federal claims against these Defendants. Dkt. 114 pp. 1-40.

11 **Eighth Amendment Claims**

12 As detailed in the Report and Recommendation, the alleged conduct of Defendant Finch -
13 a distasteful comment and lustful leering at Plaintiff's naked body - is not objectively harmful
14 enough to establish a constitutional violation. See *Watison v. Carter*, 668 F.3d 1108, 1112 (9th
15 Cir. 2012); *Somers v. Thurman*, 109 F.3d 614, 616 (9th Cir. 1997). Similarly, assuming the truth
16 of the allegations against Defendants Grijalva, Percifeld, Penrose, and Jackson, there is no
17 evidence that any of them acted with deliberate indifference or that Plaintiff suffered any
18 physical harm, or future risk of harm, as a result of their conduct. See *Watison*, 668 F.3d at
19 1112-13. Addressing the allegations against Defendant Sinclair, there is no evidence to show
20 that Defendant Sinclair was personally involved or participated in any violation of his
21 constitutional rights. There is also insufficient evidence to raise a genuine issue of material fact
22
23
24

25 ¹ Plaintiff's claims against Defendants Carolee Roop, Michael Estes, Kristi Entrop, Crispin Juguilon, Lawrence
26 Adamire, Ronald Fraker (Eighth Amendment claim only), Shawn Walker, Kurt Grubb, Daniel DeLeon, John
Palmer, Jason Romero, and Donald Taber were dismissed with prejudice on December 11, 2012. Dkts. 106, 110.

1 as to whether Defendant Williams was deliberately indifferent to a substantial risk of serious
2 harm to Plaintiff.

3 **Failure to Exhaust – Claim Against Defendant Buchmann**

4 In addition to failing to raise a genuine issue of material fact as to any constitutional
5 violation, Plaintiff's claims against Defendant Buchmann are subject to dismissal for failure to
6 exhaust administrative remedies.

7
8 **Fourteenth Amendment Claims**

9 Plaintiff's Fourteenth Amendment claims against Defendants Ulrich, McGarvie,
10 Heaward, and Fraker are subject to dismissal as these claims are not cognizable under 42 U.S.C.
11 § 1983. *Heck v. Humphrey*, 512 U.S. 477, 481 (1994); *Neal v. Shimoda*, 131 F.3d 818, 824 (9th
12 Cir. 1997). Plaintiff's claim of retaliation against Defendant McGarvie is subject to dismissal
13 because Plaintiff has failed to present evidence of a constitutional violation.

14
15 **Eleventh Amendment – State of Washington and DOC**

16 The claims against the State of Washington and Department of Corrections are subject to
17 dismissal as these entities are not subject to liability pursuant to 42 U.S.C. § 1983.

18 **Supplemental Jurisdiction**

19 Jurisdiction over the state law claims is declined as the Court has dismissed all claims
20 over which it has original jurisdiction. See 28 U.S.C. § 1367.

21
22 **Defendant Denise Larson**

23 On December 11, 2012, the Court adopted the Report and Recommendation (Dkt. 106)
24 granting Defendants' motion for summary judgment (Dkt. 89). This Order dismissed the claims
25 against Defendants Carolee Roop, Michael Estes, Kristi Entrop, Crispin Juguilon, Lawrence
26 Adamire, Ronald Fraker (Eighth Amendment claim only), Shawn Walker, Kurt Grubb, Daniel

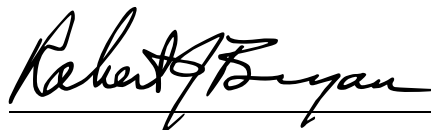
DeLeon, John Palmer, Jason Romero, and Donald Taber. Denise Larson was also a party to the motion and the claims against Ms. Larson were subject to the Report and Recommendation. See Dkt. 106 pp. 15-18, 44-45. Denise Larson is entitled to summary judgment and dismissal of Plaintiff's claims.

CONCLUSION

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom, the Objections to the Report and Recommendation, and the remaining record, does hereby find and **ORDER**:

1. The Court adopts the Report and Recommendation (Dkt. 114).
2. Defendants' Motion for Summary Judgment (ECF No. 87) is **GRANTED**.
3. Plaintiff's federal claims against Defendants Ethan Finch, Kim Grijalva, Robert Percifeld, Jason Ulrich, Bryan McGarvie, Herbert Penrose, Darren Heaward, Adelaide Williams, Ronald Fraker, Stephen Sinclair, Robert Jackson, Department of Corrections, and State of Washington are **DISMISSED WITH PREJUDICE**.
4. Plaintiff's state claims are **DISMISSED WITHOUT PREJUDICE**.
5. Plaintiff's claims against Defendant Raymond Buchmann are **DISMISSED WITHOUT PREJUDICE** for failure to exhaust.
6. Plaintiff's claims against Defendant Denise Larson are **DISMISSED WITH PREJUDICE**.
7. All claims against all parties having been dismissed (Dkts. 110 and 118), this matter may be closed.
6. The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. Karen L. Strombom.

DATED this 23rd day of April, 2013



ROBERT J. BRYAN
United States District Judge